

## REMARKS

In the Office action of January 26, 2005, claims 1-14, 18-32, 36-48, and 64-70 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,726,708 (“Lasheras”). Claims 15-17, 33-35, 49-51, and 71-72 were rejected under 35 U.S.C. 103(a) because it would have been obvious to combine the teachings of the Lasheras patent in view of U.S. Patent No. 6,231,594 (“Dae et al.”).

By the present amendment, claims 1, 18, 29, 36, 64, 71, and 74 have been amended; and claims 11, 22, and 65-66 have been canceled without prejudice. Claims 1-10, 12-21, 23-51, 64, and 67-74 are pending and under consideration in the present application. Applicant respectfully requests reconsideration of the present application.

## SECTION 102 AND 103 REJECTIONS

Claims 1-14, 18-32, 36-48, and 64-70 were rejected under Section 102(e) based on Lasheras. Claims 15-17, 33-35, 49-51, and 71-72 were rejected under Section 103 based on the combination of Lasheras in view of Dae. Applicant respectfully requests that the Section 102 and 103 rejections of the claims be withdrawn.

### Independent claim 1, *et al.*

Applicant has amended independent claim 1 to add the step of “expanding the balloon catheter to a size and shape that distends the stomach;” and dependent claim 11, which recites that the expanded balloon catheter distends the stomach, has been canceled without prejudice. Original claims 28 and 39, and previously presented claim 73, also recite distending the stomach with the balloon catheter.

The Lasheras patent, on the other hand, discloses that “the return lumen 302 when inflated takes the approximate shape of the stomach.” Col. 6, lines 44-46. Notably, the Lasheras patent does not disclose that the inflated lumen takes the shape of a distended stomach, and Applicant respectfully submits that the Lasheras patent does not teach or

suggest having an expanded balloon catheter distend the stomach. Applicant respectfully requests that independent claim 1, and all claims dependent thereon, as well as claims 28, 39 and 73, be allowed.

Independent claim 18, et al.

Applicant has amended independent claim 18 to recite the subject matter from original dependent claim 22 (*i.e.*, “maintaining the heat exchange fluid at a temperature below zero degrees centigrade”). Original claim 42 and previously presented claim 69 also recite the step of “maintaining the heat exchange fluid at a temperature below zero degrees centigrade.”

Applicant respectfully submits that the Lasheras patent does not disclose maintaining the heat exchange fluid at a temperature below zero degrees centigrade. Instead, the Lasheras patent teaches maintaining the saline fluid above zero degrees centigrade at “between 0° and 5° C.” Col. 5, lines 21-24. Accordingly, Applicant respectfully requests that independent claim 18, and all claims dependent thereon, as well as claims 42 and 69, be allowed.

Independent claim 36 and 64, et al.

Independent claim 36 has been amended to add the steps of “inserting a temperature probe into the vasculature of the patient; monitoring the temperature probe; and controlling the exchange of heat between the balloon and the stomach based on the monitored temperature.” Independent claim 64 has been amended to recite “monitoring the patient with a temperature probe introduced into the vasculature of the patient to obtain a monitored core temperature.” Support for this limitation can be found at, for example, page 14, lines 15-17, of the specification.

The Lasheras patent, on the other hand, states that “[t]he core body temperature may be determined [*sic*] by a temperature monitor 128, which may be an esophageal monitor, a tympanic monitor, or any other type of temperature monitor as is known in the

art with which core body temperature may be monitored.” Col. 4, lines 16-20. These temperature monitors are all non-invasive. Moreover, the Lasheras patent further states that “cooling of the internal organs and a considerable amount of blood can be accomplished without the invasive step of inserting a catheter directly into the vascular system.” Col. 4, lines 1-4. Thus, the Lasheras patent teaches away from invasively inserting a temperature sensor into the vasculature of the patient. Accordingly, Applicant respectfully requests that independent claims 36 and 64, and all claims dependent thereon, be allowed.

#### INFORMATION DISCLOSURE STATEMENTS

An Information Disclosure Statement for the present application was submitted on March 18, 2002. A Supplemental Information Disclosure Statement was submitted on May 21, 2004.

Applicant has yet to receive an initialed copy of either Statement. *See* M.P.E.P. 609 (“Once the minimum requirements of 37 CFR 1.97 and 37 CFR 1.98 are met, the examiner has an obligation to consider the information. . . . The initials of the examiner placed adjacent to the citations on the PTO-1449 or PTO/SB/08A and 08B or its equivalent mean that the information has been considered by the examiner to the extent noted above.”). Applicant again respectfully requests that Examiner initial the reference citations in the two previously submitted Information Disclosure Statements.

Applicant also notes a typographical error in the Information Disclosure Statement of March 18, 2002. U.S. Patent No. 6,231,594 was mistyped as “6,231,584” in the accompanying Form FB-A820 (PTO-1449). That patent, however, was correctly identified in the Notice of References cited (form PTO-892) attached to the Office action of January 26, 2005.

Another Supplemental Information Disclosure Statement is also being submitted concurrent with this amendment. Applicant requests that all submitted Statements be initialed with copies thereof sent to Applicant.

CONCLUSION

Applicant respectfully requests favorable reconsideration of the present application at an early date. Should the Examiner have any comments or questions regarding any of the foregoing, kindly telephone the undersigned.

Date: April 14, 2005

Respectfully submitted,

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